

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Eleanor Kathleen Fahlbusch,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:10cv93
)	
Commissioner of Social Security,)	
)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On December 10, 2009, plaintiff Eleanor Kathleen Fahlbusch commenced this action in the Middle District of Florida by filing a complaint and a motion to proceed inform a pauperis. The motion to proceed inform a pauperis was denied, with direction from the court to plaintiff to either re-file the motion with the proper supporting financial affidavit establishing indigency, or pay the filing fee, within 20 days. The court advised that failure to comply could result in dismissal of the action. Plaintiff failed to comply, prompting the court to issue an Order to Show Cause why this action should not be dismissed for lack of prosecution. Plaintiff's counsel responded to the Order, requesting a 60 day extension to renew the motion or pay the filing fee. Counsel advised the court that plaintiff had moved to North Dakota and counsel was unable to contact her.

On its own motion, the court in Florida declared venue in the Middle District of Florida improper and entered an order directing plaintiff to show cause why the action should not be transferred to North Dakota. No response was forthcoming and the case was transferred to North Dakota on October 6, 2010. (Doc. #11). A Notice of Direct Assignment and Attorney

Admission letter were mailed to plaintiff's counsel. (Doc. #12). A second notice was sent to counsel on October 25, 2010. (Doc. #15). In the interim, defendant Commissioner of Social Security moved to dismiss the action for lack of prosecution under Rule 4(m) of the Federal Rules of Civil Procedure. (Doc. #13). Plaintiff's counsel has not responded to the court's Notice of Direct Assignment, has not moved for admission to practice in this court, and has not filed a response to the motion to dismiss.

Defendant has never been served with the complaint in this action and the time to do so, 120 days from the filing of the complaint, has long since passed. F.R. Civ. P. 4(m). Plaintiff has never paid the filing fee or been granted permission to proceed in forma pauperis. Accordingly, the action was not properly filed. Plaintiff's whereabouts are unknown and counsel's continued failure to communicate with the court dictates this action be dismissed for failure to prosecute. Defendant's Motion to Dismiss (Doc. #13) should be **GRANTED**.

Therefore, **IT IS RECOMMENDED** that this action be **DISMISSED**, without prejudice.

Notice of Right to Object

Pursuant to Local Rule 72.1 (D)(3), any party may object to this recommendation within fourteen (14) days after being served with a copy.

Dated this 6th day of December, 2010.

/s/ Karen K. Klein
Karen K. Klein
United States Magistrate Judge